

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Ft. Myers Division

THE NEWS-PRESS and PENSACOLA
NEWS-JOURNAL, divisions of
MULTIMEDIA HOLDINGS CORPORATION
and CAPE PUBLICATIONS, INC., publisher
of FLORIDA TODAY

Plaintiffs,

v.

Case No.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY and its
component FEDERAL EMERGENCY
MANAGEMENT AGENCY,

Defendants.

_____ /

COMPLAINT

Plaintiffs, The News-Press and Pensacola News-Journal, divisions of
Multimedia Holdings Corporation and Cape Publications, Inc., publisher of
FLORIDA TODAY (collectively referred to as the “Newspapers”), sue the
Department of Homeland Security and its component Federal Emergency
Management Agency (collectively referred to as the “Department”) and states as
follows:

INTRODUCTION

1. This action is brought pursuant to the Freedom of Information Act
 (“FOIA”), 5 U.S.C. § 552, as amended, to compel the disclosure of records concerning

the distribution of federal aid to those affected by the unprecedented four hurricanes that hit Florida in 2004.

2. A significant controversy has arisen concerning the distribution of hurricane aid. Although hundreds of thousands of people were affected by the hurricanes, residents of Miami-Dade County – a county that received minimal damage – may have received a disproportionate share of hurricane relief aid.

3. A new hurricane season is now only months away. Obtaining information that sheds light on the Department's handling of claims is of urgent concern to the Newspapers and their readers. The citizens of Florida have an intense and legitimate interest in knowing that the Department appropriately handled hurricane relief claims and that aid went to those truly in need.

4. The information requested by the Newspapers is subject to public disclosure under FOIA. The Department has also acknowledged the immense public interest in the information. Nevertheless, the Department has failed to respond or produce responsive records in a timely fashion.

5. Given the substantial interest and the urgency to inform the public concerning the Department's handling of hurricane relief aid, the Newspapers seek expeditious treatment of this Complaint pursuant to 28 U.S.C. § 1657.

PARTIES

6. Plaintiffs The News-Press and Pensacola News-Journal are divisions of Multimedia Holdings Corporation. The News-Press is a newspaper of general circulation in Southwest Florida. The Pensacola News-Journal is a newspaper of

general circulation in Northwest Florida. Plaintiff Cape Publications, Inc., publishes FLORIDA TODAY a newspaper of general circulation in Eastern Florida. Reporters for the Newspapers routinely rely upon federal records as a principal source for newsgathering, including records of the Department.

7. Defendant United States Department of Homeland Security (“Homeland Security”) is a department within the executive branch of the United States government. Defendant Federal Emergency Management Agency (“FEMA”) is a component unit of Homeland Security and is responsible for responding to natural disasters and providing relief assistance on behalf of the federal government. Both defendants are agencies of the United States within the meaning of 5 U.S.C. § 552(f)(1). The Department has possession and control of the records requested by the Newspapers.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction of this action and personal jurisdiction over the Department pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

9. Venue is premised on The News-Press’ place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

GENERAL ALLEGATIONS

6. During the 2004 hurricane season, an unprecedented four (4) major hurricanes struck the State of Florida.

7. The hurricanes caused widespread damage and had some effect upon every county in Florida.

8. In the aftermath of the hurricanes, thousands of Florida residents requested aid from the Department.

9. Issues concerning how that aid has been distributed and the legitimacy of claims for relief have been the subject of numerous media reports in Florida and nationwide. For example, questions have surfaced concerning the legitimacy of claims and amount of aid received in Miami-Dade County – a county that sustained minimal damage.

10. Questions about fraud and abuse have prompted an investigation by the U.S. Senate Committee on Homeland Security and Governmental Affairs.

11. In order to shed light on the Department's handling of claims for aid, the Newspapers requested documents related to the distribution of emergency aid to counties struck by the four hurricanes to hit Florida this past year.

12. By letter dated January 17, 2005, the Newspapers requested the following records from the Department pursuant to FOIA: "a copy of all of FEMA's payments for administrative costs in Florida related to the following disasters: #1539 Hurricane Charley, #1545 Hurricane Frances, #1551 Hurricane Ivan, and #1561 Hurricane Jeanne." A copy of this request is attached at composite Exhibit A.¹

¹ Although the request as written mentioned only The News-Press, that newspaper in fact made the request not only on its own behalf but also on behalf of the News-Journal and FLORIDA TODAY. The News-Journal and FLORIDA TODAY joined the original requests with the Department's consent.

13. By letter dated February 2, 2005, the Department acknowledged the Newspapers' request and estimated that it would take approximately ninety (90) days to complete processing of the request. A copy of this response is attached as Exhibit B.

14. By letter dated November 4, 2004, the Newspapers requested the following records from the Department pursuant to FOIA: "An electronic spreadsheet . . . showing all the flood claims from NFIP for Florida for the calendar year 2004. A copy of this request is attached at composite Exhibit C.

15. By letter dated February 15, 2005, the Department acknowledged the Newspapers' request and estimated that it would take approximately thirty (30) days to complete processing of the request. A copy of this response is attached as Exhibit D.

16. The Department has failed to comply with the applicable time limit provisions for the Newspapers' requests. See 5 U.S.C. § 552(a)(6)(A)-(B).² Therefore, the Newspapers have exhausted their administrative remedies with respect to their requests. See id. at § 552(a)(6)(C).

17. Because of the Department's refusal to timely respond to the Newspapers requests or produce the requested records, the Newspapers had to retain the undersigned attorneys in order to pursue their rights and have agreed to pay their attorneys' reasonable fees.

² Additionally, the Department did not provide the Newspapers the opportunity to limit the scope of the requests so that it could be processed within the timeframe. Nor did the Department provide the Newspapers the opportunity to arrange an alternative time frame.

COUNT I

(Violation of FOIA for failure to timely respond to the Newspapers' requests)

18. This is an action pursuant to 5 U.S.C. § 552.

19. The Newspapers reallege and incorporate by reference paragraphs 1 through 17 as if fully set forth herein.

20. Pursuant to FOIA, the Newspapers requested government records from the Department concerning the four hurricanes to hit Florida in 2004.

21. The Department failed to respond to the Newspapers' requests in a timely manner.

22. The Department's failure to respond timely the Newspapers' requests violates FOIA, 5 U.S.C. 552(a)(6)(A)(i), and the Department's own regulations promulgated thereunder.

COUNT II

(Violation of FOIA for failure to make records promptly available)

23. This is an action pursuant to 5 U.S.C. § 552.

24. The Newspapers reallege and incorporate by reference paragraphs 1 through 17 as if fully set forth herein.

25. Pursuant to FOIA, the Newspapers requested government records concerning the four hurricanes to hit Florida in 2004.

26. The Department has failed to provide any records responsive to the Newspapers' requests.

27. The Newspapers have a statutory right to the records they seek. 5 U.S.C. § 552(a)(3). The Department has improperly withheld the records in question.

28. The Department's failure to make promptly available and to release the documents requested by the Newspapers violates FOIA. 5 U.S.C. § 552(a)(3)(A).

REQUEST FOR RELIEF

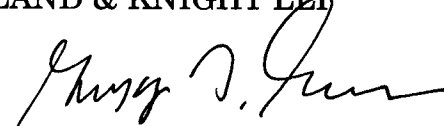
WHEREFORE, the Newspapers respectfully requests that this Court:

- (A) expedite consideration of this Complaint pursuant to 28 U.S.C. § 1657;
- (B) order the Department to produce the requested records to the Newspapers, as provided by 5 U.S.C. § 552(a)(4)(B);
- (C) award the Newspapers their costs and reasonable attorneys' fees in this action, as provided by 5 U.S.C. § 552(a)(4)(E); and
- (D) grant such other and further relief as this Court may deem just and proper.

Dated March 8, 2005.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Gregg D. Thomas", is written over a horizontal line.

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